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REMARKS AND ARGUMENTS

A. Summary of the Final Office Action

Claims 1-21, 23, and 25-31 are pending in the application. The examiner maintained the rejections of all of these claims as being obvious under 35 U.S.C. § 103(a) in light of the combination of U.S. Patent No. 6,606,502 ("Chung Kam Chung") with Published U.S. Patent Application No. 2005/0096059 ("Jiang").

Claims 1, 14, 23, and 28 are independent.

B. Response to the Final Office Action

In several instances, claim limitations added by the amendments filed on January 8, 2007 were not addressed in the Final Office Action. Because the Final Office Action fails to state any ground of rejection with respect to these limitations, the applicant respectfully requests withdrawal of the finality of the Office Action and re-opening of prosecution. *See* 37 C.F.R. § 113(b) ("In making such final rejection, the examiner shall repeat or state all grounds of rejection ... clearly stating the reasons in support thereof.") Moreover, because the prior art relied on fails to address elements of several claims, it further cannot establish a *prima facie* case of obviousness with respect to those claims. For these reasons, set forth in further detail below, and for the reasons given in the applicant's January 8, 2007 response, the applicant respectfully requests reconsideration and withdrawal of the claim rejections.

1. Claims 1 and 28

a. The Final Office Action Does not Address all Claim Elements

The applicant respectfully submits that the Final Office Action fails to establish a *prima facie* case of obviousness against independent claims 1 and 28, because it does not allege that any prior art teaches the step of “sending the electronic message to the message gateway only after determining that the expected delay is less than the threshold delay” (claim 1), or the operation of “send[ing] the electronic message over the network interface only if the expected delay is less than the threshold delay” (claim 28). These claimed features were added in the response filed on January 8, 2007. However, these features were apparently overlooked in the preparation of the Final Office Action. In particular, the Final Office Action at pages 2-3 provides a bulleted list of prior art citations that allegedly correspond to each subparagraph of claim 1 *except* for the final subparagraph, which recites the step at issue. Because this series of citations end with the word “and,” with no further citation, (see Final O.A., page 3), it appears that the examination of claims 1 and 28 is simply incomplete.

b. The Unexamined Claim Elements Are Absent from the Cited Art

As the applicant explained in the response filed January 8, 2007, neither the Chung Kam Chung nor the Jiang references relied on disclose that an electronic message can be sent to a message gateway only *after* determining that the expected delay is sufficiently short. Because the Final Office Action does not allege that this feature is taught in the prior art, and because the prior art of record does not, in fact, disclose this

feature, the applicant respectfully requests withdrawal of the rejections of claims 1 and 28 and of the claims dependent therefrom

2. Claim 23

a. The Final Office Action Does not Address all Claim Elements

With respect to independent claim 23, the Final Office Action fails to establish a *prima facie* case of obviousness. The First Office Action did not identify any basis for the rejection of claim 24, which depends from claim 23. The applicant subsequently amended claim 23 to incorporate the limitations of claim 24. The Final Office Action still identifies no prior art in which the limitations imported from claim 24 are found. Instead, the Final Office Action purports to reject claim 23 for the same grounds as the rejections of claims 1 and 28. However, these grounds of rejection, which relate to “a method for delivering electronic messages,” simply do not correspond to the elements of claim 23, which recites a “delay manager.”

b. The Unexamined Claim Elements are Absent from the Cited Art

The applicant does not believe that the features imported from claim 24, such as the claimed “subscriber data storage,” are disclosed in the claimed combination in either Chung Kam Chung or Jiang. Accordingly, claim 23 and those that depend from it are believed to be patentable over the prior art of record.

3. Claim 14

a. The Final Office Action Does not Address all Claim Elements

The rejection of independent claim 14 likewise fails to establish a *prima facie* case of obviousness. In the response filed January 8, 2007, the applicant amended claim 14 by adding the underlined claim limitation quoted here:

sending the electronic message to the message gateway only after determining that the expected delay is less than the threshold delay

The Final Office Action, however, overlooks this added limitation and makes only the same rejection that was raised in the first Office Action. *Compare* Final O.A., page 6 (“sending the electronic message only after determining that the expected delay is less than a threshold. See column 7 lines 54-67”) with First O.A., page 7 (same). The added limitation clarifies that the message is not even sent to the message gateway unless the expected delay is sufficiently short, and the Final Office Action does not allege that this feature is taught anywhere in the prior art.

b. The Unexamined Claim Elements are Absent from the Cited Art

The prior art relied on does not teach the claimed feature of sending the electronic message *to the message gateway* only if it is determined that the expected delay is sufficiently short. To the contrary, the Final Office Action alleges that Chung Kam Chung teaches sending an electronic message *from* the message gateway. *See* Chung Kam Chung, Col. 7, lines 54-67 (relied on at Final O.A., page 6); *see also* Final O.A., page 4 (alleging that the MSC of Chung Kam Chung is a “message gateway”).


Because the Final Office Action does not allege that this feature is taught in the prior art, and because the prior art of record does not, in fact, disclose this feature, the

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applicant respectfully requests withdrawal of the rejections of claim 14 and of the claims dependent therefrom.

C. Conclusion

The applicant believes the claims are in a condition for allowance. If the examiner has any questions regarding the application, the applicant's representative may be contacted at 312-913-2115.


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